



AMERICAN COUNCIL OF THE BLIND

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January 10, 2000

Ms. Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 Twelfth Street, S.W., TW-A325
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Referencing: MM Docket No. 99-339 (Implementation of Video Description of Video Programming.-- NOTICE OF PROPOSED RULEMAKING.)

The American Council of the Blind (ACB) extends our deep appreciation and congratulations to the Federal Communications Commission for your enlightened and progressive notice of proposed rulemaking issued on November 18, 1999 in the matter of video description. In view of the major beneficial impact upon our national blindness community of the promulgation of a video description rule, it is imperative that the American Council of the Blind offer our expertise and assistance to the FCC in the form of the following commentary.

Introduction I.1.3

"Video description is typically provided through the use of the Secondary Audio Programming channel so that it is audible only to those who wish to hear the narration. The narration generally describes settings and actions that are not otherwise reflected in the dialogue, such as the movement of a person in the scene. In this Notice of Proposed Rulemaking, we propose to adopt limited requirements to ensure that video description is more available so that all Americans can enjoy the benefits of television. We expect to expand these requirements once we have gained greater experience with video description."

ACB supports the approach taken with emphasis on the expansion of video described programming as soon as possible.

Introduction I 4.11

"In addition, the President's Advisory Committee on the Public Interest Obligations of Digital Television Broadcasters has encouraged digital broadcasters to provide video description."

ACB recommends that video description become a base feature of digital programming and that this objective be addressed in the proposed regulation sufficiently

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enough so as to secure video description as a baseline service within the digital environment as it becomes the successor to analog.

Background II 9

"Technology. Video description can be either "open" or "closed." Open description is provided as part of the main soundtrack of a program. As a result, no special equipment is needed for a broadcaster or multichannel video programming distributor (MVPD) to transmit the descriptions or for the viewer to receive them. The descriptions cannot, however, be turned off."

ACB supports the exploration of the delivery of video description through alternatives to the secondary audio programming channel when the alternatives provide the same availability and effective description service. The utilization of Radio Reading Services to simulcast the audio and description track might be such an alternative. Other evolving technologies such as web television or internet audio streaming when the convergence of television and internet technology occurs; could also become a legitimate alternative. These and other creative approaches would have to both be available to the same audience with the same ease of use and effectiveness before they could replace the use of the SAP channel.

Background II 10

"Closed description is provided on the Secondary Audio Programming, or SAP, channel. The SAP channel allows for an additional audio soundtrack for a program, independent of or separate from the monaural and stereophonic soundtracks. A secondary carrier, or subcarrier, transmits the SAP channel audio soundtrack through a modulator. When the SAP channel is used, a programming distributor transmits two separate audio tracks. The second audio track is transmitted with the main program signal. For example, the SAP channel as currently used by PBS for its video description is transmitted with the main program signal from the network's master control facility and satellite distribution system to the local station's broadcast facility and through the local transmitter. To accommodate the additional soundtrack, changes may need to be made to some network and local stations' plant wiring and equipment. At the local transmitter, the broadcast station or cable operator must have the technical facilities to pass through the subcarrier signal to include the SAP channel information."

ACB recognizes that some adjustments will most likely need to be done, however, we strongly encourage the reader of the foregoing language to not lose sight of the forest for the technology trees. In short, the changes that will need to happen when they will be in fact needed, are sufficiently small, inexpensive, and easily done to render them not a major consideration.

Proposals and requests for comment III 20

"In this section, we outline a particular proposal of the kind that we envision for the initial implementation of these rules. The proposal would require broadcasters affiliated with

ABC, CBS, Fox, and NBC in Nielsen's top 25 Designated Market Areas (DMAs), and larger MVPDs, to provide some "closed" video description.⁵⁴ We propose that these broadcasters and MVPDs provide a minimum of 50 hours per calendar quarter (roughly four hours per week) of described prime time and/or children's programming.⁵⁵ Larger MVPDs would be required to carry the described programming of the broadcasters affiliated with the top 4 networks, and of nonbroadcast networks that reach 50% or more of MVPD households.⁵⁶ We also propose that these broadcasters and MVPDs begin providing the required described programming no later than 18 months after the effective date of our rules. We further propose to adopt procedures to waive our rules if compliance would be unduly burdensome, and to adopt enforcement procedures. These proposals are described in more detail below."

ACB suggests that these minimum requirements be expanded to 20 hours per week and that implementation begin within 12 months of promulgation of the final rule. Moreover, ACB believes any waivers granted must be based upon a narrow and substantially rigorous set of standards.

Proposals and requests for comment II 22

"We recognize that broadcasters are in the process of converting from analog to digital technology. The flexibility inherent in digital technology may make the provision of video description even easier and less costly. Given that the need for video description exists now and that the transition to digital will not occur overnight, however, we do not wish to wait for the transition to be complete before adopting video description requirements. We are thus proposing to apply the requirements outlined in this Notice to analog broadcasters. We do intend, however, to extend our video description requirements to digital broadcasters in the future. We are inclined not to adopt a specific timetable to apply to digital broadcasters in the Report and Order arising out of this Notice, but rather to address such specifics in a future proceeding. At that time we can craft rules based upon the experience we have gained as a result of analog broadcasters' implementation of our initial requirements. We seek comment on this approach. We also seek comment on what technical issues are raised by the provision of video description by digital broadcasters and on how the conversion to digital affects the costs associated with the provision of video description."

ACB applauds the clear intent of the Commission to insure that the transition from analog to digital be made deliberately and consistent with a solid approach. We do believe, however, that it is critical to the survival of video description through a digital modality, that a structure, process and expectation of video description on digital television be established and implemented in the regulation. There is conclusively too much danger of other interests gaining priority, and the technologic development of standards that could chill the implementation of video description, for the commission to leave the issue entirely up to another day.

ACB further believes that the FCC should be clear that any estimated costs associated with digital TV and programming be realistic to the task and not become a

reason for distributors to avoid responsibility.

Proposals and requests for comment III 23

"Entities to Describe Programming. We propose to hold programming distributors, as opposed to producers, responsible for compliance with our video description rules. We recognize that distributors may not actually describe the programming. In the closed captioning proceeding, the Commission observed that others such as producers might more efficiently caption programming, but reasoned that the Commission could more easily monitor and enforce the rules by holding distributors responsible for compliance.⁵⁷ We believe this reasoning is equally applicable here, and therefore propose to hold distributors responsible for complying with video description requirements. We seek comment on these views."

ACB agrees with the logic in this and congratulates the FCC on developing a truly market driven approach.

Proposals and requests for comment III 24

"We propose to apply our rules to all distributors of video programming over which we have jurisdiction. Video programming distributors include television broadcast stations, cable operators, direct broadcast satellite (DBS) operators, home satellite dish (HSD) providers, open video system (OVS) operators, satellite master antenna television (SMATV) operators, and wireless cable operators using channels in the multichannel multipoint distribution service (MMDS). We believe that as many distributors as possible should provide video description to enhance the availability of the service, as well as to ensure a level playing field among distributors."

ACB agrees and suggests that the FCC expand the definition to include entities which will come under the jurisdiction of the FCC with the passage of time and development of new technologies.

Proposals and requests for comment III 25

"We believe, however, that our initial rules should only require the largest distributors to provide video description." "Our proposal would not require any noncommercial stations to provide video description at this time, given the financial difficulties that many of them face, particularly during the transition to DTV."

ACB agrees with the approach of those most able to implement video description first, should be those who do so. We respectfully suggest, however, that public television which has already been carrying video description should be included in the initial mix. Smaller stations who legitimately cannot afford immediate conversion could be given time to accomplish the change. It is important to note that there are national networks such as those operating on the UHF band that should be reviewed by the Commission to determine

if their relative size justifies their placement in the order.

Proposals and requests for comment III 27

"We also seek comment on our proposal to require the largest distributors to provide described programming beginning 18 months after the effective date of our rules. We wish to select a beginning date that ensures more widespread video description is available rapidly, but does not impose an undue burden on distributors."

ACB believes this is more than generous given the fact that the technology and methodology of video description have existed for years and can be easily imported to programming development. Hence we believe the twelve month parameter for start-up is both easily done and appropriate.

Proposals and requests for comment III 29

"Programming to be Described. We propose that the distributors should initially provide a minimum of 50 hours per quarter (roughly four hours per week) of video description of prime time and/or children's programming. As the Commission stated in the Video Accessibility Report, "initial requirements for video description should be applied to new programming that is widely available through national distribution services and attracts the largest audiences, such as prime time entertainment series."⁶⁷ Our proposal to require distributors to describe roughly four hours per week of prime time programming is consistent with first phase of the Coalition's and NCAM's proposals. Although four hours per week appears to be a reasonable starting point, we prefer to express the requirement as 50 hours per quarter in order to grant distributors additional flexibility in selecting the best programming to describe. We propose also to permit distributors to meet the 50 hour video description requirement by describing children's programming in order to meet the needs of children with visual disabilities. As indicated above, NCAM suggests that video description of children's programming would also provide a benefit to children with learning disabilities. Within these broad categories of programming, the distributors would have flexibility to decide which programming will reach the largest audience and be most likely to provide the intended benefits of video description. We seek comment on our proposal, and on any alternatives."

ACB believes the minimum requirement of 50 hours should be increased to 250 hours and must be a baseline from which expansion should rapidly develop. The mix of prime time and programming for children begs the question of legitimate value to differing audiences and ACB recommends that the 4 hours of prime time become 20 hours. In addition, 33% of programming for children should be video described in the first year with 66% in the second year and 100% in the third. Only in this way would the needs of adults and children be properly met. However, the expanded programming for children should not lessen the expansion requirements of adult programming over the course of the existing time table.

Proposals and requests for comment III

29 continued

"We also seek comment on how to ensure that the public, and in particular people with disabilities, know when described video programming is scheduled."

ACB is very concerned about the ability of the blind person to access the information as to what is showing on the various channels including those which have descriptive video. While it is relatively easy to assign a marker of some sort to listings that feature video description, it is also necessary for visual menus appearing on direct TV and cable in particular to become accessible to those attempting to access the information. Even more fundamental to the equation is the need for visual screens such as those that appear on TV sets for programming the set for stereo or SAP to be accessible. The technologies exist to make these menus and screens accessible and should be incorporated into the rule, if the user is to have the on-ramp access to the information from which to choose a video described or other program.

Proposals and requests for comment III 30

"Commenters in our earlier NOI proceedings have noted that Spanish-language audio sometimes competes for use of the SAP channel. We seek comment on the extent to which Spanish or other languages use or plan to use the SAP channel, the impact, if any, of today's proposals on such services, and how such potential conflicts could be avoided or minimized."

ACB recognizes that competing use of the SAP channel may become a problem in certain areas. We believe alternative methods of delivering the signal such as Radio Reading Services in those particular cases or dividing the presentation of the programs at times in alternate languages and at times in video description might also resolve the problems in those few areas where conflicts might arise. Another solution in the short term would be to offer video described prime time shows and programs for children that are not in competition with foreign language translations, in so far as the programs offered are of the same audience appeal and market attraction. In no circumstance, however, should the secondary audio programming channel be considered as anything less than the primary mode of conveyance for video description within the current state of technology.

Balance II 31

"In addition, commenters in our earlier NOI proceedings have argued that a second script, which may constitute a "derivative work" under copyright law, is necessary to provide video description. As noted above, however, many distributors have provided video description for years, and apparently have not found this to be an obstacle. We seek comment on whether copyright issues could become an obstacle to video description, and, what could be done to prevent or minimize such a result.

ACB does not view this issue with any more concern than that afforded the Library of Congress talking books program. The information from video description, while different,

is essentially the same as reporting what is happening visually. The extent to which the average viewer draws their own reality of what is on the screen is pretty much the same as would a blind viewer.

Proposals and requests for comment III 32

"The Coalition points out that public safety messages that scroll across the TV screen are totally inaccessible to persons with visual disabilities, and proposes that an aural tone be required to accompany the messages to alert such persons to turn on a radio, the SAP channel, or a designated digital channel.⁷⁰ We believe that it is of vital importance for these emergency messages to be accessible to persons with visual disabilities."

ACB agrees with the importance of this requirement of access to public safety and other important messages. We believe that the stations could provide a tone and have a phone number to call for the information which could simply be a recorded message. The problem with relying upon the tone to prompt a person to listen to the radio is that the radio may not be talking about the information which may be time sensitive to its usefulness.

Proposals and requests for comment III 33

"Waivers and Enforcement Procedures. We also propose to adopt procedures to enforce our rules, and to waive them if compliance would result in an undue burden. The Commission adopted such procedures in its closed captioning rules.⁷² Guided by statutory factors, the Commission determined that factors relevant to a showing that compliance with its closed captioning rules would result in an undue burden are the nature and cost of captioning the programming, the impact on the operation of the petitioner, the financial resources of the petitioner, and the type of operations of the petitioner. The Commission also adopted some basic pleading requirements and timetables for petitions for waiver."

ACB believes these standards for a waiver might be appropriate if the standards are articulated in the regulation and are realistic in their application. Shows intended for pure visual enjoyment might qualify for a waiver while a silent movie would not. A small station without any real revenues to afford the modest expansion might qualify depending upon its total budget and assets available to it from associated or interlocking corporations.

Proposals and requests for comment III 33 continued

"In terms of enforcement, the Commission did not adopt any reporting requirements, but rather simply adopted pleading requirements and timetables. We seek comment on whether these procedures are appropriate for our initial video description rules.

ACB strongly suggests that an informal complaint procedure be added to the

enforcement rules. This would allow for consumers to have the ability to have our voices heard, and subsequent reviews, investigations and resolutions performed. It would further lessen burdensome requirements and lengthy delays, while promoting non-adversarial methods of communications and positive results.

Jurisdiction IV 34

"We seek comment on the question whether we possess statutory authority to adopt the above-proposed video description rules. We also seek comment on the question whether the existence or relative strength of such authority varies according to the type of video programming provider - broadcaster, cable operator, or DBS company, for example - potentially subject to the rules.

ACB is aware of the legal arguments that have been made to support the FCC jurisdiction in this matter and finds them appropriate and sufficiently compelling to substantiate the FCC authority.

Conclusion V. 40

"We adopt this Notice in order to stimulate greater availability of video description, while at the same time not impose an undue burden on distributors. To meet the needs of the millions of Americans with visual disabilities, many public television stations and a few cable programmers have voluntarily provided some video described programming, and we applaud these efforts. Through the limited requirements we propose today, we hope to make this service more widely available to ensure that all Americans have access to video programming."

ACB echoes and applauds this conclusion.

In closing and as a related matter to the above, the American Council of the Blind has for many years been concerned about the use of video graphics as a means of conveying information to the average viewer. These video graphics typically appear as an advertisement which usually ends in the announcer saying, "Available at these fine stores." Obviously, if a blind person were interested in buying the product, they would find themselves unable to do so since they could not read which fine stores or a graphically represented telephone number. ACB believes a minimum requirement be made to ensure that the viewer has the ability to know the information necessary to communicate with the seller in these circumstances.

Your thoughtful consideration of the above comments is greatly appreciated by ACB and we can assure you that they have been written only after a thorough process of balancing the best interests of all material parties to this discussion.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles H. Crawford". The signature is stylized with large, bold letters and a prominent dot at the end.

Charles H. Crawford
Executive Director